



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
222 W. 7th Avenue, #43
Anchorage, Alaska 99513-7577

February 7, 2000

Sally Brough
Water Quality Standards Coordinator
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, WA. 98101

Re: Jon M. Asplund
Water Pollution
Control Facility

Dear Ms. Brough:

The National Marine Fisheries Service (NMFS) has received your request for an updated list of threatened or endangered species under the Endangered Species Act, and information on the requirements of Essential Fish Habitat (EFH) consultation. NMFS is responsible for the administration of the Endangered Species Act (ESA) as it applies to certain salmonids, cetaceans and pinnipeds in Alaska. These include the northern (Steller) sea lion and seven species of whales; fin, right, humpback, blue, sperm, sei, and bowhead. Due to the location of the facility, no threatened or endangered species under our jurisdiction are expected near the project site. However, we provide the following information on the beluga whale (which is a candidate species for listing under the ESA), for your review.

Candidate Species

NMFS has responded to previous permitting actions in Cook Inlet by identifying species of special concern or which may be adversely affected by degradation of habitat. The Cook Inlet beluga whale is such a species, and one which we believe justifies specific measures to protect. We have conducted annual aerial surveys of the Cook Inlet beluga whale. Preliminary results of these surveys indicate this population currently consists of 357 animals. These surveys found essentially all of these whales occupy the upper Inlet, during ice-free periods, with major concentrations at the mouths of several streams and rivers. The Susitna River is particularly important in terms of numbers of whales observed. At times, several hundred animals were seen in the Susitna River delta and immediate offshore area. Stomach contents of subsistence-harvested whales shows they are feeding on salmon and eulachon (hooligan) entering these waters on their spawning migrations. Whales also calve in the upper Inlet during the spring and early summer. The warmer waters of these rivers may play an important part in the survival of young animals, which have not developed sufficient fat layers for thermal protection. The clustered distribution of whales, physical characteristics of the river mouths, small number of sites, and the availability of a concentrated food source within upper Cook Inlet suggest these areas provide habitat necessary to the well-being of the beluga.

The beluga whale can be very sensitive to disturbance, and we have often observed pronounced avoidance reactions to small boats operating near Anchorage. Any activity that might disturb or cause these whales to abandon important feeding or calving areas could have adverse and significant consequences. Further, such disturbance would be in violation of the Marine Mammal Protection Act.

Essential Fish Habitat (EFH)

Living marine resources contribute significantly to the Nation's food supply, economy, welfare, health, and recreational opportunities. Due to the tremendous increase in coastal residents, industries, and development in recent years, wetlands and other fish habitats are disappearing at an alarming rate.

The incremental, cumulative, and secondary effects of these losses require careful analysis. The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) of 1996 recognized this



need, stating that: "one of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States."

Congress established the EFH provisions to accomplish this goal, and defined EFH to include "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." An Interim Final Rule implementing the EFH provisions was published on December 19, 1997 (62 Federal Register 66531), following extensive public participation. As described in Subpart J of that rule, the law required each regional fishery management council to amend its fishery management plans (FMPs) to describe EFH for all life stages of each managed species, identify potential adverse impacts from both fishing and non-fishing activities, and recommend actions to conserve and enhance EFH. The FMP amendment process designated EFH as some subset of the total range of every managed species, including state and Federal waters. In Alaska, EFH is found throughout the U.S. exclusive economic zone, in coastal waters within the territorial sea, and inland for certain habitat used by managed anadromous species.

In addition to the EFH designation provisions, the MSFCMA requires Federal agencies, such as the Environmental Protection Agency (EPA), to consult with the Secretary of Commerce regarding any action or proposed action authorized, funded or undertaken by the agency that may adversely affect EFH identified under the Act. MSFCMA requires NMFS to work with state and Federal agencies to minimize adverse impacts of any activities that could affect EFH. Subpart K of the Interim Final Rule outlines procedures for Federal agencies to consult with NMFS on activities proposed, authorized, funded, or undertaken that may adversely affect EFH, individually or cumulatively. Should a Federal agency determine that an action may adversely affect EFH they are required to submit an assessment to NMFS of potential adverse impacts and conservation measures to counter those impacts. That assessment, and related discussions, should occur during the review period prior to decisions on permits, funding, or any final action.

The EFH assessment can be provided in either in a separate document or clearly referenced in a support document, such as an environmental assessment for the project. The content of an EFH assessment as outlined in 50 CFR Part 600.920 (g) includes: (i) a description of the proposed action, (ii) an analysis of the effects on EFH, (iii) the agency's views regarding the effects of the action on EFH, and (iv) proposed mitigation. Once an EFH assessment is received by NMFS, the Habitat Conservation Division will review and offer EFH conservation recommendations to the action agency.

We soon plan to have an established EFH area within our Internet site <http://www.fakr@noaa.gov> which will include the EFH Environmental Assessment, EFH Habitat Assessment Reports, EFH data sets, and EFH maps. Therefore, until we complete this construction, we offer the following EFH information for Upper Cook Inlet to assist your review:

EFH Species	Life Stage
Chinook, chum, coho, pink, and sockeye salmon	Adults, juveniles
Pacific Cod	Adults, late juveniles
Walleye Pollock	Adults, late juveniles
Sculpin spp.	Adults, late juveniles
Eulachon	Adults, juveniles
bold = species of particular interest	

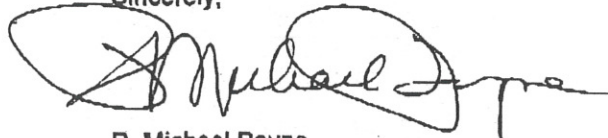
Additionally, EFH defines certain habitats as Habitat Areas of Particular Concern (HAPC). HAPC's have been briefly defined as; 1) nearshore areas of intertidal and submerged vegetation (eelgrass, laminaria), rock, and other substrates. These areas provide food and rearing habitat for juvenile groundfish (pacific cod) and spawning areas of some species (e.g., Atka mackerel, yellowfin sole), and may have a high potential to be affected by shore-based activities; 2) offshore areas with substrates of high-micro-habitat diversity, which serve as cover for groundfish and other species. These can be areas with rich epifaunal communities (e.g., sponges, coral, anemones, bryozoans, etc.), or with large particle size (e.g., boulders, cobble); and 3) anadromous streams, lakes, and other freshwater areas which are used by Pacific salmon for migration, spawning, and rearing, especially in urban areas and in other areas adjacent to intensive developmental activities.

We hope this information is useful to you in fulfilling any requirements under Section 7 of the ESA and EFH requirements under the MSFCMA. In addition, NMFS has been working with several different individuals at the EPA to develop a finding that EPA's current National Environmental Policy Act (NEPA) Compliance Program for new source National Pollutant Discharge Elimination System (NPDES) meets the consultation requirements of the MSFCMA and the Interim Final Rule.

NMFS would like to have additional discussions with the EPA to address where would be the most appropriate place to incorporate the EFH consultation process into existing permitting processes. Section 600.920(e)(3) of the MSFCMA states that consultation and commenting under sections 305(b)(2) and 305(b)(4) of the MSFCMA should be consolidated where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes, such as NEPA, if: 1) the existing process provides NMFS with timely notification of actions that may adversely affect EFH; 2) notification includes an assessment of impacts of the proposed action as discussed in section 600.920 (g); and, 3) NMFS has made a finding pursuant to section 600.920(e)(3) that the existing process satisfies the requirements of section 305(b)(2) of the MSFCMA.

We appreciate your coordination on this project, look forward to hearing back from you or another individual for further discussions on developing a process to implement the EFH consultation requirements. Please contact Mr. Matt Eagleton of my staff at (907) 271-5006 regarding questions on this project. Please contact Ms. Jeanne L. Hanson of my staff regarding development of a finding and utilizing existing environmental review processes to meet the consultation requirements of the MSFCMA.

Sincerely,

A handwritten signature in dark ink, appearing to read "P. Michael Payne", with a large, stylized loop at the end.

P. Michael Payne
Assistant Regional Administrator
for Habitat Conservation